IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDCITION

WRIT PETITION LODGING NO. 968 OF 2007

Dinesh Kesrimal Jain & Ors. .....Petitioners.

V/s

The State of Maharashtra & Ors. .....Respondents.

Mr. V.A. Gangal with Mr. Ashok T. Gade for the Petitioners.

Mr. Pradip Jadhav, AGP for Respondent Nos. 1, 3 and 4.

Mr. Girish Utangale for Respondent No.2.

Mr. Anil Singh for Respondent No.7.

CORAM: V.M. KANADE, J.
DATE : 27th April, 2007

P.C.:-

1. Heard the learned Counsel appearing on behalf of the Petitioners and the learned Counsel appearing on behalf of the Respondents.

2. The Petitioners are challenging the order passed by the District Deputy Collector & Competent Authority dated 17/04/2007 which is passed under section 38 of the Maharashtra Slum Areas (Improvement, Clearance & Re-development) Act, 1971 which order

has, in turn, been confirmed in appeal by the Administrator & Divisional Commissioner, Konkan Division, Mumbai by his order dated 19/04/2007.

3. Brief facts which are relevant for the purpose of deciding this Petition are as under:-

4. The Petitioners are occupying the commercial premises at Khandwala Compound, Vakola, Santacruz (East), Mumbai - 400 055 in the plot bearing Nos. 192 to 426 which is declared as a slum area by the competent authority. Initially, the Petitioners were declared as ineligible for the allotment of temporary and permanent alternative accommodation under the Slum Rehabilitation Scheme. It appears that the Petitioners filed two suits in the City Civil Court, Mumbai; firstly challenging the Scheme, which suit was not pursued further and, thereafter, similar suit was again filed more or less on the same grounds which was also disposed of. Thereafter, they filed Writ Petitions in this Court being Writ Petition Nos. 2337, 2338, 2339 and 2340 of 2001 and the Division Bench of this Court issued directions to the competent authority to decide the question of eligibility of the Petitioners.

5. It is the contention of the learned Counsel appearing on behalf of Respondent No.7 that all these Petitioners are now held to be eligible for temporary and permanent alternative accommodation. He submits that the two premises are being given as commercial premises and two premises are being given as partly commercial and partly residential.

6. Number of slum dwellers filed Petitions in this Court which were heard by my learned brother A.M. Khanwilkar, J., who, by order dated 22/06/2004, disposed of the entire group of Petitions. A direction was given that all the Petitioners therein should be adjusted in transit camp No.4. A grievance was made in the said Petitions that the said transit camp No.4 was likely to be demolished. A statement had been recorded by the learned Single Judge in his order passed in those group of Petitions that there was no possibility of transit camp No.4 being demolished by the Municipal Authorities in the near future. Further an assurance which was given on behalf of Respondent Nos. 5 and 6 in the said case, that as soon as the permanent accommodations in the said Scheme becomes available, all the Petitioners would be provided tenements in the newly

constructed premises as per their eligibility, was also recorded. A direction was given to the Petitioners to vacate the premises as soon as intimation was given by the concerned authorities regarding availability of transit camp No.4. The Petitioners herein chose not to challenge the aforesaid order which was passed in the said group of Writ Petitions. The other slum dwellers filed LPAs against the said order which came to be disposed of by the Division Bench of this Court and the order passed by the learned Single Judge dated 22/06/2004 was confirmed. The present Petitioners, thereafter, filed another Writ Petition No. 68 of 2005 which came before the Division Bench (Coram: F.I. Rebello & V.K. Tahilramani, JJ.). The said Writ Petition was also dismissed. Pursuant to the directions which were given by this Court in the said group of Petitions on 22/06/2004, the Deputy Collector thereafter issued notice under section 38 of the said Act and he has recorded the order which is passed by this Court in the said group of Petitions. It is also recorded that the LPAs which were filed by other Petitioners have been dismissed and, therefore, a direction was given to the Petitioners to vacate the premises. Against the said order, again an appeal was preferred under section 45 and the appellate court also dismissed the said appeal.

7. Mr. Gangal, the learned Counsel appearing on behalf of the Petitioners made the same grievance that the transit camp No.4 was going to be demolished by virtue of the order passed by the High Court in another Writ Petition. He further submitted that the said accommodation which was being granted to the Petitioners was on the first floor and he submitted that the Petitioners are carrying on business and if the accommodation is provided on the first floor, it is likely to affect their business which is the only source of their livelihood. The other grievance which was made by the learned Counsel Mr. Gangal was that the Respondent No.7 had not shown the exact area of the shop wherein the Petitioners were going to be given permanent alternative accommodation.

8. The learned Counsel appearing on behalf of Respondent No.7 and other respondents submitted that the Petitioners have approached this Court on number of occasions and are making the same grievance over and over again. The learned Counsel submitted that the Petitions filed by the Petitioners having been dismissed on two occasions by this Court, there is no reason to interfere with the impugned order which is passed.

9. In my view, the present Writ Petition is not maintainable since earlier Petition which was filed by the Petitioners has been rejected by this Court vide order dated 22/06/2004. The other Writ Petition which was filed by the Petitioner being Writ Petition No. 68 of 2005 also has been dismissed by the Division Bench of this Court (Coram: F.I. Rebello & V.K. Tahilramani, JJ.) and, thereafter, this Petition has been filed and the same grievance is again repeated. The present Petition, in my view, is therefore not maintainable. This is the third Petition which is barred by principle of constructive *res judicata*. The learned Counsel appearing on behalf of Respondent No.7 has made a statement on instructions that the Petitioners would be given an alternative permanent accommodation as per their eligibility criteria in the newly constructed building. A transit accommodation is being offered to the Petitioners. It is clarified that in the event the said transit accommodation is sought to be demolished pursuant to any order passed by this Court, the respondents shall be duty bound to provide other alternative accommodation to the Petitioners. With these directions, Writ Petition is disposed of.

(V.M. KANADE, J.)